



Katie M. Brown
Counsel

Duke Energy
40 W. Broad Street
DSC 556
Greenville, SC 29601

O: 864-370-5296
F: 864-370-5027

Katie.Brown2@duke-energy.com

March 12, 2020

VIA ELECTRONIC FILING

The Honorable Jocelyn G. Boyd
Chief Clerk/Executive Director
Public Service Commission of South Carolina
101 Executive Center Drive, Suite 100
Columbia, SC 29210

**Re: Rulemaking Proceeding for the Purpose of Promulgating a Regulation to Help Prevent the Potential for Misleading Advertisements by Prohibiting the Sale of Customer Data by Regulated Utilities Absent a Customer's Direct Consent (See Commission Order No. 2019-877)
Docket Number: 2019-387-A**

Dear Ms. Boyd:

Duke Energy Carolinas, LLC ("DEC") and Duke Energy Progress, LLC ("DEP") (jointly referred to herein as the "Companies") respectfully submit these joint comments in response to the Notice of Drafting in the above-referenced docket, as directed by the Public Service Commission of South Carolina (the "Commission") on January 10, 2020. The Companies appreciate the opportunity to share their views, and the comments set forth below are intended to assist the Commission in developing a regulation that both establishes the appropriate parameters and standards regarding a utility's use of customer data and allows for an efficient and workable administrative process for the utilities that does not impose additional, unnecessary costs on ratepayers.

Background

On November 25, 2019, in a regularly scheduled Commission Business Meeting, Commissioner Ervin addressed an article published in *The State* newspaper regarding the sale of customer information from one of South Carolina's regulated utilities to a third party, who then used that information in a mail marketing campaign in an attempt to sell insurance. On November 27, 2019, the Office of Regulatory Staff ("ORS") filed a Petition for Rulemaking with the Commission in which the ORS raised concerns that a third party's use of customer information could cause confusion for customers and be misleading. ORS requested the Commission examine

The Honorable Jocelyn G. Boyd
March 12, 2020
Page 2

the regulations governing all utilities regarding a utility's ability to sell customers' data and promulgate a regulation to help prevent the potential for misleading advertisements by prohibiting the sale of customer data by regulated utilities absent a customer's direct consent.

On December 18, 2019, the Commission entered Order No. 2019-877 approving ORS's request to initiate a rulemaking and open a new docket. On December 19, 2019, the Commission opened Docket No. 2019-387-A and posted a Notice of New Docket & Rulemaking Proceeding, notifying the parties that the new docket would be used to address the issues raised by ORS. On January 10, 2020, ORS filed its Proposed Regulation to Protect Customer Data with the Commission, and the Commission filed its Notice of Drafting, which instructed interested parties to file comments on the Notice of Drafting by no later than 4:45 p.m. on Thursday, March 12, 2020.

Comments

A. Code of Conduct

The Companies appreciate and share ORS's concerns surrounding the sale of customer information and are supportive of the Commission's efforts to ensure the protection of customer data. The Companies would first note for the Commission's consideration that the Companies' Code of Conduct already governs the relationships, activities, and transactions between and among the Companies, their affiliates, and third parties, and provides controls that dictate the terms by which non-public customer information is shared, disclosed, and protected. The Code of Conduct was implemented by the Companies as a result of the merger between DEC and DEP and was first adopted by this Commission in Order No. 2012-517 issued in Docket No. 2011-158-E. The Code of Conduct was subsequently amended when Duke Energy Corporation acquired Piedmont Natural Gas Company, Inc. in 2016, and was again approved by the Commission in Order No. 2016-772 issued in Docket No. 2011-158-E, and filed with certain amendments to address federal pre-emption concerns on October 9, 2018, in the same docket. The protections afforded by the Code of Conduct have worked well to protect customers, and the Companies' policies and technical capabilities have been built around these existing requirements.

The Code of Conduct defines "customer information" as "[n]on-public information or data specific to a Customer or a group of Customers, including, but not limited to, electricity consumption, natural gas consumption, load profile, billing history, or credit history that is or has been obtained or compiled by DEC, DEP, or Piedmont in connection with the supplying of Electric Services or Natural Gas Services to that Customer or group of Customers." Subject to limited exceptions, section III.2.A.b of the Code of Conduct prohibits the disclosure of customer information "to any Affiliate or non-affiliated third party without the Customer's consent, and then only to the extent specified by the Customer." Further, this section of the Code of Conduct must be permanently posted on the Companies' website. At section III.2.A.f, the Code of Conduct permits the disclosure of customer information without customer consent in the following limited circumstances: (1) for the purpose of providing goods or services to the Companies (e.g., payment processing, database hosting, email service, etc.), and only upon the written agreement of the party receiving information to protect the confidentiality of the customer information; or (2) to a state

The Honorable Jocelyn G. Boyd
March 12, 2020
Page 3

or federal regulatory agency or court of competent jurisdiction if required in writing to do so by the agency or court.

The Code of Conduct further requires the Companies to store customer information in such a way as to limit access to those persons permitted to receive it, and requires all persons with access to protect its confidentiality. Moreover, the Companies have established policies, guidelines, and trainings advising their employees and representatives on how to comply with the Code of Conduct's customer information disclosure requirements. No Duke Energy Business Services employee may use customer information to market or sell any product or service to the Companies' customers, except in support of a Commission-approved rate schedule or program or a marketing effort managed and supervised directly by the Companies. Finally, the Code of Conduct mandates that should any inappropriate disclosure of customer information occur, the Companies are required to promptly file a statement with both this Commission and the North Carolina Utilities Commission ("NCUC") describing the circumstances of the disclosure, the customer information disclosed, the results of the disclosure, and the steps taken to mitigate the effects of the disclosure and prevent future occurrences.

The Companies respectfully request that any regulation promulgated in this docket be consistent with the Code of Conduct previously approved by this Commission, as it provides robust protection for customers' information. The Code of Conduct also defines certain key terms including "customer information" and "nonpublic utility operations," and the Companies believe such definitions are appropriate and well-tested for developing a regulation concerning the protection of customer data.

B. North Carolina Rulemaking Proceeding

ORS points out in its Petition for Rulemaking that the NCUC is currently considering this issue and revisions to NCUC Rules R8-7, R8-8, and R8-51 in Docket No. E-100, Sub 161. Because both DEC and DEP have service territories that span both South Carolina and North Carolina, the Companies would like to provide the Commission with a brief summary of the ongoing North Carolina proceeding.

On January 16, 2019, the Public Staff filed comments in Docket No. E-100, Sub 157 stating that, among other things, there was a need for a rulemaking to "create rules that would provide customers or a third party with customer permission appropriate access to customer data, while protecting customers and their personal and energy consumption data." The Public Staff also stated that the rulemaking in Docket No. E-100, Sub 153 could be "updated to . . . establish a definition of 'customer data,' who should have access to that data, how access should be granted, customer data protections, liability for parties who breach the confidentiality of data, and who pays for the access." On February 4, 2019, the NCUC issued an order opening Docket No. E-100, Sub 161 to initiate a rulemaking concerning customer data issues. Since that time, the Companies have engaged in several discussions with the Public Staff and Dominion Energy North Carolina ("DENC") regarding revisions to the NCUC's rules addressing customer data issues.

The Honorable Jocelyn G. Boyd
March 12, 2020
Page 4

On February 10, 2020, the Companies filed their initial joint comments in Docket No. E-100, Sub 161. In their comments, the Companies communicated their general support of the Public Staff's proposed Rules R8-7, R8-8, and R8-51 and highlighted certain areas of disagreement. In their initial comments, the Public Staff also requested—with the support of the Companies and DENC—that the NCUC allow all parties to the docket the opportunity to file reply comments. To date, the NCUC has not acted on the Public Staff's request.

C. ORS's Proposed Rule

The Companies are generally supportive of ORS's proposed regulation concerning the protection of customer data, with some exceptions, as described below. The Companies believe that ORS's proposed rule provides a good starting point, and the Companies recommend that any proposed regulation issued by the Commission utilize language from the Companies' Code of Conduct and strive for consistency with the Public Staff's proposed Rule R8-51, where possible. To that end, the Companies recommend that any proposed rule issued by the Commission should, at a minimum, incorporate and define the following key terms: aggregated data, non-public utility operations, third party, and unique identifier. Although the Companies recognize these terms are subject to change and may require refinement based on the overall content of the proposed regulation, the Companies suggest defining those key terms as set forth below:

Aggregated Data. The term “aggregated data” means customer data, alone or in combination with non-customer data, resulting from processing (e.g., average of a group of customers) or the compilation of customer data from which all unique identifiers have been removed.

Non-Public Utility Operations. The term “non-public utility operations” means all business enterprises engaged in by a utility that are not regulated by the Commission or otherwise subject to public utility regulation at the state or federal level.

Third Party. The term “third party” means a person who is not the customer, nor any of the following: (i) an agent of the customer designated by the customer with the utility to act on the customer's behalf; (ii) a regulated utility serving the customer; or (iii) a contracted agent of the utility. For purposes of this rule, “third party” includes any non-public utility operations or affiliate of the utility.

Unique Identifier. The term “unique identifier” means a customer's name, account number, meter number, mailing address, telephone number, or email address.

The Companies also propose revising the definition of “customer data” used in ORS's proposed rule to be more consistent with the definition of “customer information” utilized in the Companies' Code of Conduct, as well as the definition in the Public Staff's proposed revisions to R8-51. The Companies submit that uniformity with the Code of Conduct and the Public Staff's

The Honorable Jocelyn G. Boyd
March 12, 2020
Page 5

proposed Rule R8-51 will streamline the Companies' internal processes, reduce administrative complexity, and help to avoid any conflict with the Companies' current regulatory requirements relating to classification of customer data. To that end, the Companies propose defining "customer data" as set forth below:

Customer Data. The term "customer data" means non-public retail customer-specific data or information that has been obtained or compiled by a utility in connection with the supplying of Commission-regulated electric, natural gas, waste, or wastewater services. Customer data includes data or information that is: (a) collected from the meter, by the utility, and stored in its data systems for billing purposes; (b) customer-specific usage information for regulated utility service; (c) about the customer's participation in regulated utility programs, such as renewable energy, demand-side management, load management, or energy efficiency programs; or (d) any other non-public information specific to a customer that is related to electricity consumption, load profile, or billing history.

ORS's proposed rule also refers to both "personal information" and "personal identifying information," and appears to use those terms interchangeably throughout the proposed rule. For clarity and consistency, the Companies recommend that any proposed regulation issued by the Commission should employ and define a single term.

Section C of ORS's proposed rule speaks to the contractual relationship between a utility and a third party, whereby a third party potentially utilizes the customer's data for a "secondary commercial purpose" and mandates that any such contract "shall provide that the third party prominently discloses that secondary commercial purpose to the customer and secures the customer's consent to the use of his or her data for that secondary commercial purpose prior to the use of the data." The Companies recommend that any proposed regulation define both "primary purpose" and "secondary commercial purpose."

Finally, the Companies propose adding the following provision to section E:

This section shall not preclude a utility from, in its provision of regulated utility service, disclosing customer data to a third party, consistent with the utility's most recently approved Code of Conduct, to the extent necessary for the third party to provide goods or services to the utility and upon written agreement by that third party to protect the confidentiality of such customer data.

Conclusion

The Companies are supportive of the Commission's decision to initiate this rulemaking proceeding for the purpose of promulgating a regulation to protect customer data. The Companies urge the Commission to utilize their previously approved Code of Conduct as a starting point for this rulemaking, taking into consideration the ongoing North Carolina proceedings. The

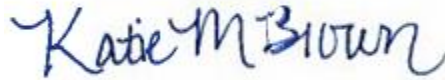
The Honorable Jocelyn G. Boyd

March 12, 2020

Page 6

Companies look forward to working with all interested parties to develop a regulation that strikes a balance between protecting customers' data and implementing an efficient and workable administrative process for the utilities that does not impose additional, unnecessary costs on ratepayers. The Companies also look forward to the opportunity to opine on any rule proposed by the Commission, once issued by the Commission for comment.

Sincerely,



Katie M. Brown

cc: Parties of record